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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,896	02/13/2002	Joy M. Campbell	P04890US1	6473

21186 7590 03/06/2006

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EXAMINER	
BERTOGLIO, VALARIE E	

ART UNIT	PAPER NUMBER
1632	

DATE MAILED: 03/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/074,896	**Applicant(s)** CAMPBELL ET AL.	
	Examiner Valarie Bertoglio	**Art Unit** 1632	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on *11/23/2005*. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-14,17,29 and 30*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: The rejection under obviousness type double patenting is maintained. Applicant has argued that claim 8 limits the particle size to at least 50 microns whereas '576 limits the size to greater than 100 microns. While claim 1 limits the plasma to a powdered form, claims 8 and 9 limit the particle size to those that fall under the definition of granulated in '576, and thus are drawn to the same subject matter. '576 taught that following compression of a powdered form, particles of sizes at least about 50 microns are obtained anf the this size is sufficient to allow granulated particles to pass though the digestive tract (see col. 4, lines 53-60). Furthermore, the range of what is claimed in claim 1 of '576 is embraced by the instant claims 1 and 8. What is being claimed, whether termed powdered or granulated, is the same as that of '576. The difference in the instant application is that Applicant has identified a new property in the product made by carrying out the claimed method, that the method of '576 results in an increase in yield of breast meat. However, the methods are either the same or made obvious by '576. Applicant has not pointed out any property of the claimed methods that make them inherently different than those of '576. With respect to the rejection under 35 USC 102(b), '576 discloses use of both powdered and granular forms. It is noted, however, that a particle size of 50 microns is made obvious by '576 at column 4, lines 55-56 and is limited to greater than 100 microns in claim 1. hile '576 teaches a more desireable result using granulated serum, it does teach use of powdered serum. The art rejection is not held over the claims of '576 alone but the teachings of the document as a whole. With respect to the rejection under 35 USC 103(a), Adelsteinsson ('878) taught the claimed method. While the teachings are centered around use of dried egg yolk, '878 taught sibstituting dried animal plasma. Applicant argues that '878 taught supranormal levels of antibodies or use of purified antibodies. However, these were specific embodiments of '878 and do not negate the teachings that anticipate or make obvious the instant invention. The above response to Applicant's arguments regarding the teachings of '576 and the rejecti under 35 USC 102(b) apply to Applicant's arguments to the rejection of claims 1 and 10 under 35 USC 102 or, in the alternative 35 USC 103.

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PRIMARY EXAMINER